IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

SECOND APPEAL NO. 262 OF 2007

Dilipkumar s/o Maroti Chawhan :: PETITIONER

-: Versus :-

Suresh s/o Narayan Meshram :: RESPONDENT

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CORAM: SMT. V. A. NAIK, J.
DATED: 27TH JULY, 2007.

P. C. :

1. Heard Mr. S. A. Gordey, Counsel for the appellant.

2. The appellant is original defendant. A suit was filed by the plaintiff for eviction of the defendant from the suit property and for possession. The plaintiff also sought a decree for grant of occupation charges of the suit property at Rs. 1,450/-. It was the case of the plaintiff that he was the exclusive owner of the suit property. According to the plaintiff the land belonged to the Government and the plaintiff had made an encroachment thereon in the year 1984 and thereafter had constructed a Pucca house consisting of three rooms thereon. The Chief Officer of the Municipal

Council, Chandrapur had registered and enrolled his house and was numbered as 946 up to 31/3/1994. Thereafter the house number changed to 945. The plaintiff was regularly paying electricity charges to the Maharashtra Electricity Board till the date of filing of the suit. The defendant was his brother-in-law and when the defendant came to Chandrapur in the year 1991, the plaintiff permitted the defendant to reside in a room of the plaintiff's house on the request of the defendant. Since the defendant was not ready to vacate the premises in spite of requests made by the plaintiff, the plaintiff instituted the present suit for eviction and possession on the ground that defendant was illegally occupying the suit premises.

3. The defendant filed his written statement and denied the claim of the plaintiff. It was denied that the plaintiff was the owner of the suit house and had made encroachment on the Nazul land in the year 1984 by constructing a house thereon. Some of the other pleadings of the plaintiff were also denied by the defendant. The defendant pleaded that he was not permissive occupant in the suit premises and he had been residing in the suit premises since last 16 years.

4. On the aforesaid pleadings of the parties, the trial Court framed the issues and after considering the evidence tendered by the parties, dismissed the suit filed by the plaintiff. It was held by the trial Court that the plaintiff had failed to prove that he was the exclusive owner of the suit property. The Court held that the plaintiff had

further failed to prove that the house number was changed from 946 to 945 after 31/3/1994 in the record of the Municipal Council, Chandrapur. The Court then held that the plaintiff had further failed to prove that the defendant was illegally occupying the suit house. The plaintiff challenged the judgment and decree passed by the trial Court on 09/6/2003 in an appeal. The appellate Court on re-appreciation of the material evidence on record held that the plaintiff was the lawful occupier of the suit premises and the defendant had failed to vacate the suit house on 31/12/1999. The Court held that the plaintiff was successful in proving that the defendant was permissive licensee in the suit house and, therefore, he had every right to ask the defendant to vacate the suit premises. The appellate Court further directed the defendant to pay an amount of Rs. 1,450/- to the plaintiff towards the damages for illegal use and occupation of the suit premises. This second appeal is preferred against the judgment passed by the appellate Court on 05/01/2007.

5. Shri Gordey, Counsel for the appellant submitted that the appellate Court was not justified in reversing the findings recorded by the trial Court without framing the necessary and proper issues as required under the provisions of Order 41 Rule 31 of the Code of Civil Procedure. According to the Counsel for the appellant this defect went to the root of the matter and it clearly caused prejudice to the defendant. He then submitted that even otherwise, the appellate Court was not justified in reversing

the findings recorded by the trial Court as there is nothing to show that the plaintiff was permissive occupier of the suit premises and the defendant was illegally possessing the suit premises.

6. I have perused both the judgments with the assistance of the learned Counsel for the appellant. The trial Court on an appreciation of the evidence tendered by the parties had recorded findings against the plaintiff to dismiss the suit of the plaintiff. However, the first appellate Court being the final fact finding Court, re appreciated the material evidence on record to reverse the findings recorded by the trial Court. Though the appellate Court did not frame issues as framed by the trial Court and framed only three points for determination, the reasons recorded by the appellate Court while deciding the three points for determination clearly show that the appellate Court had scanned the evidence tendered by the parties on record to reverse the findings recorded by the trial Court. Hence, it cannot be said that great prejudice was caused to the defendant by non framing of the issues or points for determination in a proper manner.

7. Though, the points for determination could have been framed in a better way, mere non framing of the point for determination in a proper way would not be a ground for modifying or setting aside the judgment passed by the appellate Court.

It would be necessary to refer to the provisions of Section 99 of the Code of Civil

Procedure which stipulate that no decree shall be reversed or substantially varied in an appeal on account of any error, defect or irregularity in any proceedings in the suit when the defect, error or irregularity does not effect the merits of the case or the jurisdiction of the Court. As already pointed out here in above, the non framing of the points for determination in an ideal manner, shall not be and would not be a ground for reversing the judgment passed by the first appellate Court as it appears from the reasons recorded by the appellate Court that the appellate Court had applied its mind to the relevant evidence tendered by the parties on record. The appellate Court had considered the fact that the plaintiff had produced the tax receipts showing that he was paying the taxes in respect of the suit premises. The plaintiff had also produced document at Exh. 42 which was an extract of buildings and land assessable to tax for the year 1989 to 1994 which showed that house No. 946 had been occupied by the plaintiff. The appellant had also produced the assessment index extract (Exh. 42) which disclosed that during the year 1994 to 1998 house No. 946 had been converted to house No. 945 and the same had been shown in the name of the plaintiff in the same ward. Similarly, for the year 1998 to 2004 the house No. 945 was shown in the name of the plaintiff. The plaintiff also produced ration card at Exh. 45 and certain other documents at Exhs. 48 and 49 to support his case. The appellate Court considered the fact that the defendant had not produced a single document on record

to show that the suit property was recorded in his name in any of the Government records or in the record maintained by the local authority. The appellate Court considered the documentary evidence i.e. map (Exh.41) which shows that the plaintiff had constructed a house of three rooms on the Nazul land which included the suit premises. Thus, after considering electricity bills, house tax receipts and water tax receipts produced by the plaintiff, the appellate Court held that the plaintiff was lawful occupier of the premises in question. The appellate Court has rightly observed that the defendant had failed to produce cogent evidence to prove that he was the lawful occupier of the suit premises. The appellate Court further recorded the finding that there is material evidence available on record to show that the plaintiff had succeeded in proving that house No. 946 had been later on changed to house No. 945 after the year 1994. In fact, the reasons recorded by the appellate Court for reversing the judgment passed by the trial Court are based on a proper appreciation of the material evidence on record and the reasons recorded by the appellate Court are also extremely reasonable. I find no fault whatsoever in the judgment of the appellate Court so as to interfere with the judgment in the second appeal merely on the ground that it was necessary for the appellate Court to have framed proper issues or points while determining the appeal. As already stated herein above, though the points have not been framed on certain issues, the issues are

in fact, decided by the appellate Court.

8. For the reasons aforesaid, the second appeal fails and stands dismissed with no order as to costs.

9. At this juncture, the prayer is made on behalf of the appellant that the appellant may be permitted to remain in occupation of the suit premises for a few months as the appellant is residing in the suit premises for a number of years and it would not be possible for the appellant to immediately secure, yet another accommodation specially in this rainy season.

10. The request made on behalf of the appellant is just and reasonable. The appellant is permitted to occupy the suit premises for a period of six months from to day only on the condition that he should furnish an undertaking to this Court within a period of two weeks that he would positively vacate the suit premises and deliver peaceful possession of the suit premises to the plaintiff/respondent on or before 31st January, 2008.

11. Order accordingly.

JUDGE

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